

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

OSCAR RAMOS,

Plaintiff,

v.

STAVROULA PISTIOLAS,

Defendant.

No. 2:24-cv-02117-SCR

ORDER

The parties this case have consented to proceed before a United States Magistrate Judge. *See* 28 U.S.C. § 636(c); ECF No. 13. Accordingly, this matter was assigned to the undersigned for all purposes. ECF No. 13. Now before the Court is Defendant’s Motion to Dismiss (ECF No. 14), which the Court heard on February 13, 2025. For the reasons set forth below, the Motion is granted.

**I. Background and Procedural History**

Plaintiff filed this action on August 6, 2024. Plaintiff alleged violations of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*) (herein “ADA”) and California state law, including violation of California Civil Code §§ 51, *et seq.* (the Unruh Act).<sup>1</sup>

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<sup>1</sup> California’s Unruh Civil Rights Act “operates virtually identically to the ADA.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 731 (9th Cir. 2007). Any violation of the ADA “necessarily

1 Plaintiff alleges he is a “physically handicapped” person and a “person with a disability” as those  
 2 terms are used under the ADA and state law. ECF No. 1 at ¶ 6. Defendant Stavroula Pistiolas is  
 3 alleged to be an owner and operator of Little Knopp Bakery (the “Bakery”).<sup>2</sup> Plaintiff alleges he  
 4 encountered barriers to accessibility at the Bakery, including problems with designated parking  
 5 spaces, a “too high and very narrow” service counter, and “too narrow” interior aisles. *Id.* at ¶¶ 3-  
 6 4.

7 Plaintiff’s complaint seeks several forms of relief, including: 1) injunctive relief  
 8 concerning the Bakery’s policy and procedures; 2) statutory damages; 3) prejudgment interest;  
 9 and 4) attorney’s fees and costs. ECF No. 1 at 21-22. Defendant filed an Answer. ECF No. 5.

10 The parties filed a Joint Status Report. ECF No. 15. Therein, Defendant claims to have  
 11 “remediated all alleged violations identified in the Complaint, and raised by Plaintiff and his  
 12 expert witness, Robert Cortez, at the joint inspection.” ECF No. 15 at 1. Defendant seeks to  
 13 dismiss the action on the basis that the ADA claim is moot. ECF No. 14. Opposition and reply  
 14 briefs were filed. ECF Nos. 17 & 20.

## 15 II. Defendant’s Motion to Dismiss

16 Defendant’s Motion to Dismiss argues that the Court lacks subject matter jurisdiction  
 17 because the Plaintiff’s ADA claim is moot. ECF No. 14 at 1-2. Defendant submits with the  
 18 motion the declarations of Michael Miyaki, an ADA compliance expert, and Mark Iezza. ECF  
 19 Nos. 14-1, 14-2. Defendant contends she has corrected and otherwise removed all barriers to  
 20 access alleged in the Complaint. *Id.* at 7. Defendant contends this renders the ADA claim for  
 21 injunctive relief moot, and asks that the Court decline supplemental jurisdiction over the state law  
 22 claim.

23 Plaintiff’s opposition argues that he visited the Bakery in April and May of 2024, and that  
 24 he has stated a claim under the ADA and Unruh Act. ECF No. 17 at 1-2. Plaintiff contends a site

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25 constitutes a violation of the Unruh Act,” which provides for minimum statutory damages. *Id.* A  
 26 “litigant need not prove she suffered actual damages to recover the independent statutory  
 damages of \$4,000.” *Id.*

27 <sup>2</sup> Plaintiff voluntarily dismissed Efphimios Pistiolas as a defendant based on Defendant Stavroula  
 28 Pistiolas’ representation that Efphimios passed away prior to the filing of this suit on June 9,  
 2024. ECF No. 12.

1 inspection occurred on November 20, 2024, and that Plaintiff’s expert, Roberto Cortez, “found  
 2 several barriers to disabled access.” *Id.* at 2. Plaintiff concedes “it does appear that the barriers  
 3 stated in the complaint, and the barriers found during the site inspection, have been removed as of  
 4 today’s date [January 3, 2025].” *Id.* at 3. However, Plaintiff contends the issue remains of  
 5 whether injunctive relief is needed to order Defendant not to violate the law in the future. *Id.*  
 6 Additionally, Plaintiff contends that barriers in addition to those pled in the complaint were  
 7 identified at the site inspection: 1) the interior landing space in front of the entrance did not have  
 8 enough space; and 2) the door handle height was incorrect. *Id.* Plaintiff argues that there is a  
 9 chance the violations could recur in the future because the aisles could easily be reconfigured by  
 10 moving shelving. *Id.* at 7. Plaintiff further contends that because Defendant’s expert disputes  
 11 whether the aisles are aisles under the law and required to be 44-inches wide, as opposed to 36-  
 12 inches wide, there is a chance that Defendant will not comply in the future. *Id.* at 8-9.

13 In support of their briefing, both parties submitted declarations. A court can consider  
 14 materials beyond the pleadings in evaluating a motion to dismiss based on lack of jurisdiction.  
 15 *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (“In resolving a factual  
 16 attack on jurisdiction, the district court may review evidence beyond the complaint without  
 17 converting the motion to dismiss into a motion for summary judgment.”). “Mootness is a  
 18 question of subject matter jurisdiction properly raised under Rule 12(b)(1),” and a court may  
 19 consider evidence outside the pleadings in deciding a 12(b)(1) motion. *Zielinski v. SEIU Local*  
 20 *503*, 499 F. Supp. 3d 804, 808 (D. Or. 2020), citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
 21 2000).

#### 22 **A. Mootness**

23 Defendant argues the ADA claim is moot because Plaintiff can only receive injunctive  
 24 relief under the ADA, and Defendant has already made the necessary changes to the Bakery.  
 25 ECF No. 14 at 7-8. Defendant is correct that only injunctive relief is available under Title III of  
 26 the ADA. *See Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (“Damages are not recoverable  
 27 under Title III of the ADA—only injunctive relief is available for violations of Title III.”).  
 28 However, Plaintiff disputes that he has received all the injunctive relief available on his ADA

1 claim. ECF No. 17 at 8. Additionally, Plaintiff argues, even if Defendant has remedied the  
2 violations alleged in the complaint, rendering the ADA claim moot, the Court has supplemental  
3 jurisdiction over the state law claims. 28 U.S.C. § 1367(a).

4 “A claim is moot if it has lost its character as a present, live controversy.” *Kearns v. Ford*  
5 *Motor Co.*, 567 F.3d 1120, 1127 (9th Cir. 2009). “If there is no longer a possibility that a [party]  
6 can obtain relief for his claim, the claim is moot and must be dismissed for lack of jurisdiction.”  
7 *Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 521 (9th Cir. 1999). Here, Plaintiff contends  
8 that because the width of the aisles is easily adjustable, an injunction as to future conduct may be  
9 necessary.

10 Recognized exceptions to the mootness doctrine allow a court to review a claim that is  
11 otherwise moot, including: 1) collateral legal consequences; 2) capable of repetition yet evading  
12 review; and 3) voluntary cessation. *See Center for Biological Diversity v. Lohn*, 511 F.3d 960,  
13 964 (9th Cir. 2007). Plaintiff argues that this case falls into the voluntary cessation category.  
14 ECF No. 17 at 5. Plaintiff contends that if Defendant has made adjustments by moving some  
15 lightweight shelving, but is still arguing that compliance is not necessary because the walkways  
16 are not “aisles,” Defendant may not comply in the future. *Id.* at 7 (“[t]he defense admits that  
17 these display cases that are part of the aisles are light and easily moved”).

18 By the time of the hearing, the parties agreed that all barriers to accessibility had been  
19 removed, bringing Defendant into compliance with the ADA. Defendant’s expert states that he  
20 inspected the site on October 24, 2024, and that there was no problem with the van accessible  
21 parking, and the service counter had “been lowered” to 34 inches. ECF No. 14-2 at ¶¶ 8-9. The  
22 additional barriers identified by Plaintiff’s expert were subsequently remedied. ECF No. 17 at  
23 3:15-17. Defendant has declared her intention to maintain the Bakery in compliance with the  
24 ADA. ECF No. 14-2 (Pistolas Declaration). Defendant also received no pre-litigation notice  
25 about the Bakery’s alleged violations of the ADA and did not resist the need to make adjustments  
26 or engage in prolonged litigation over liability. In summary, the challenged conditions have been  
27 remedied, some through structural changes, Defendant has declared her intention to maintain  
28 compliance, and there is no long-running pattern of resistance or non-compliance.

On this factual background, “there is no reasonable expectation that the wrong will be repeated[.]” *Barnes v. Healy*, 980 F.2d 572, 580 (9th Cir. 1992). Rather, Defendant has met her “heavy burden of persuad[ing] the court” that the alleged barriers “cannot reasonably be expected to start up again[.]” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). Thus, the voluntary cessation exception to mootness does not apply. *See Watanabe v. Home Depot USA, Inc.*, 2003 WL 24272650, at \*4 (C.D. Cal. July 14, 2003) (in evaluating whether an ADA case is moot, a court properly evaluates “the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations”). There is no longer a live controversy as to Plaintiff’s ADA claim and that claim is accordingly moot.

### **B. Supplemental Jurisdiction**

Plaintiff takes the position that the Court should exercise supplemental jurisdiction over his state law claims under 28 U.S.C. § 1367 even if it dismisses the ADA claim as moot. Defendant argues that if the Court dismisses the ADA claim as moot, it will have dismissed all claims over which it has original jurisdiction and should decline supplemental jurisdiction. ECF No. 14 at 9. Defendant contends the Court has not considered the merits of the state law claims and there would be no judicial economy interest in the case remaining here. *Id.*

“District courts ‘may’—and often do—‘decline to exercise supplemental jurisdiction’ if, as here, they have ‘dismissed all claims over which it has original jurisdiction.’” *Johnson v. Montpelier One LLC*, No. 19-CV-06214-EJD, 2020 WL 3504458, at \*3 (N.D. Cal. June 28, 2020) (citing 28 U.S.C. § 1367(c) and declining to exercise supplemental jurisdiction over an Unruh Act claim after finding ADA claim moot). Here, as in many areas of the law, the procedural posture matters. In *Arroyo v. Rosas*, 19 F.4th 1202 (9th Cir. 2021), the Ninth Circuit stated that where the court had already granted summary judgment on the ADA claim, the values of judicial economy and convenience “weigh very heavily in favor of retaining jurisdiction.” 19 F.4th at 1215. The Ninth Circuit stated that where the disposition of the Unruh Act claim “follows obviously and ineluctably” from the district court’s decision on the ADA claim, “it would be a sheer waste of time and resources to require that claim to be refiled in state court.” *Id.*

1 In another recent case, *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022), the Ninth Circuit  
2 affirmed the district court's decision to decline supplemental jurisdiction over an Unruh Act  
3 claim. The court in *Vo* distinguished *Arroyo* by finding the district court had declined  
4 supplemental jurisdiction earlier in the litigation and had sufficiently explained the "exceptional  
5 circumstances" and "compelling reasons" for doing so.

6 In the instant case, the Court is dismissing the ADA claim as moot early in the litigation  
7 and without engaging in lengthy merits-based analysis. There is accordingly little to no judicial  
8 economy in retaining jurisdiction to adjudicate the Unruh Act claim. "As the Court has not  
9 considered the merits of the Unruh Act claim, there is no interest in judicial economy in retaining  
10 the case. Nor has Plaintiff articulated any significant inconvenience that he would face in refileing  
11 in state court." *Johnson*, 2020 WL 3504458, at \*4.

12 Plaintiff cites to two recent cases from the Eastern District of California in which the court  
13 retained jurisdiction over Unruh Act claims: *Sepulveda v. Garcia*, 23-cv-02177-DC-JDP and  
14 *Sepulveda v. Gray*, 23-cv-02769-WBS-JDP. ECF No. 17 at 10. Neither case is particularly on  
15 point, as default judgment was entered on ADA claim and the issue of whether the court should  
16 continue to retain jurisdiction over the Unruh claim does not appear to have been put at issue. At  
17 the hearing in the instant case, the Court provided Plaintiff an opportunity to submit cases where a  
18 district court maintained jurisdiction over an Unruh Act claim after dismissing an ADA claim as  
19 moot. However, four of the cases Plaintiff submitted were at the summary judgment stage, while  
20 the remaining two had been pending for over a year before a motion was filed. ECF No. 23.  
21 Those cases are accordingly materially distinguishable from the instant case and do not persuade  
22 the Court to retain jurisdiction under these circumstances.

### 23 **III. Conclusion**

24 Accordingly, **IT IS HEREBY ORDERED** that:

- 25 1. Defendant's Motion to Dismiss (ECF No. 14) is **GRANTED**.

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1           2. The Court dismisses as moot Plaintiff's ADA claim and dismisses his state law claims  
2 without prejudice to refile in state court.

3           3. The Clerk shall enter Judgment and close this file.

4 Dated: April 22, 2025

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7 SEAN C. RIORDAN  
8 UNITED STATES MAGISTRATE JUDGE  
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